1	PROPOSED BY: BUCHANAN, DONOVAN, SCANLON		
2	INTRODUCTION DATE: JULY 9, 2024		
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4 5	RESOLUTION NO		
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8	REQUESTING WHATCOM COUNTY SUPERIOR COURT ISSUE A DECLARATORY		
9	JUDGMENT TO DETERMINE WHETHER INITIATIVE 2024-01 IS PROCEDURALLY		
10	INVALID		
11			
12	WHEREAS, Whatcom County Council recognizes the importance of the initiative		
13	process granted in the County Charter; and		
14	W/UEDEAC, the W/heteene County Chenter Correspiction, and the W/heteene County		
15 16	WHEREAS, the Whatcom County Charter Commission, and the Whatcom County		
17	Council and the voters of Whatcom County have moved to facilitate greater access to the citizens' initiative process in Whatcom County; and		
18	chizens mitative process in whatcom county, and		
19	WHEREAS, the initiative process can only be used lawfully and is subject to rules		
20	and limitations imposed by the County Charter and State Law; and		
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22	WHEREAS, Washington Courts have recognized that it is appropriate to evaluate a		
23	proposed local initiative to determine whether it is within the limited scope of the local		
24 25	initiative process; and		
25 26	WHEREAS, Washington Courts have recognized that the scope of the citizen		
27	initiative process is far more limited at the local level versus the state level; and		
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29	WHEREAS, Washington Courts have deliberated over distinctions of legislative		
30	versus administrative matters that may or may not be the subject of citizen initiatives; and		
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32	WHEREAS, Whatcom County has an Advisory Memorandum from November 2013		
33 34	that outlines legal tests and procedures to determine if a local ballot measure is a proper subject for initiative and referendum; and		
34 35	subject for initiative and relevendum, and		
36	WHEREAS, the Advisory Memorandum states that the only way for the validity of		
37	the subject matter of a proposed Initiative to be addressed is in the courts; and		
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39	WHEREAS, proposed Initiative 2024-01 has apparent defects that a court must		
40	adjudicate; and		
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42	WHEREAS, Initiative 2024-01 appears to be an invalid referendum because it seeks		
43 44	a referendum on a county ordinance but was not supported by sufficient signatures and/or concerns subjects exempt from referendum under the County Charter; and		
44 45	concerns subjects exempt from referendum under the county charter, and		
46	WHEREAS, the petition for Initiative 2024-01 appears to be invalid for violating the		
47	petition form requirements of Whatcom County Code 1.08.060.D, which require that the		
48	ballot title be inserted in the "We, the undersigned" section of the petition itself, yet it is		
49	missing; and		
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51 WHEREAS, Initiative 2024-01 appears to interfere with the County Council's 52 exclusive authority to refer measures to the ballot under RCW 29A.04.321; and 53 54 WHEREAS, Initiative 2024-01 appears to interfere with the County Council's 55 exclusive authority over County budgets as recognized by the Washington Supreme Court in 56 Protect Public Health v. Freed, 192 Wn.2d 477 (2018) (removing county initiative from the ballot for interfering with County Council's exclusive budgetary authority), and interferes 57 58 with the County's ability to pass a budget in a timely manner; and 59 60 WHEREAS, proposed Initiative 2024-01 appears to exceed the scope of the initiative 61 process because its single operative sentence seeks only to repeal Whatcom County 62 Ordinance 2022-045, which cannot be done by local initiative; and 63 64 WHEREAS, Ordinance 2022-045 contained two primary components: (1) temporary/preliminary provisions placing a levy lid lift on the 2022 ballot, and (2) 65 66 permanent provisions to take effect if the levy lid lift is enacted, directing levy proceeds 67 towards children's well-being and protecting taxpayers by requiring planning and performance audits; and 68 69 70 WHEREAS, the temporary/preliminary provisions of Ordinance 2022-045 have been 71 superseded by the vote of the people and cannot effectively be repealed; and 72 73 WHEREAS, the repeal of the permanent provisions in Ordinance 2022-045 would 74 harm taxpayers by retroactively removing the voters' restriction on the use of levy proceeds 75 and accountability measures such as planning and performance audits; and 76 77 WHEREAS, the repeal of restrictions on the use of levy funds after the voters have 78 approved the levy appears to interfere with the statutory scheme governing property taxes, 79 which authorize a levy lid lift measure to include restrictions on the use of tax proceeds and 80 allows voters to rely upon the permanence of those restrictions for the life of the levy; and 81 82 WHEREAS, Section 5.40 of the Whatcom County Charter expressly gives the County 83 Council a role in evaluating a proposed initiative, and deciding whether to approve or reject the initiative or to propose a substitute to place before the voters; and 84 85 86 WHEREAS, the County Council's role under the Charter necessarily requires the 87 County Council to evaluate both the policy and legality of a proposed initiative; and 88 89 WHEREAS, since the County Charter was enacted in 1978, Washington courts have 90 confirmed that courts and judges should make the decision on whether a proposed initiative 91 is legal; and 92 93 WHEREAS, Initiative 2024-01 has apparent legal defects that must be evaluated for 94 the County Council to fulfil its duties under the County Charter, and the County Council 95 believes it is most appropriate for a Court to conduct that legal evaluation; and 96 97 WHEREAS, ignoring these apparent legal problems would not make them go away, since initiatives are subject to post-election challenge; and 98 99

100	WHEREAS, Courts have determined that pre-election review of local initiatives is			
101	appropriate because placing an invalid initiative on the ballot harms voters and undermines			
102	the initiative process; and			
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105	County will bring; and			
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107	WHEREAS, the County's advisory memorandum states that "The Prosecuting			
108	Attorney must file the lawsuit if the County believes that the subject matter of the initiative or referendum is beyond the scope of the Charter's powers of initiative or referendum"; a			
109	or referendum is beyond the scope of the	Charter's powers of initiative or referendum"; and		
110		lieure that laitistice 2024 01 is announdly		
111	WHEREAS, the County Council believes that Initiative 2024-01 is procedurally			
112	invalid and/or beyond the scope of the initiative power, but recognizes that the Court will			
113	make that final decision; and			
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115	WHEREAS, in rare occasions in the past, when the County Prosecutor has declined			
116	to take legal action at the direction of the County Council, the County Prosecutor has			
117	approved the County Council's hiring of outside counsel to do so; and			
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119	WHEREAS, in passing this resolution, neither the County nor the County Council			
120	take a position for or against the policies or merits of Initiative 2024-01.			
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122	County, voters, and taxpayers, the County shall bring a declaratory judgment action in			
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124	Whatcom County Superior Court to determine whether Initiative 2024-01 is procedurally			
125	invalid and/or exceeds the scope of the local initiative process for the reasons stated in this			
126	resolution; and			
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128		f the County Prosecutor is unable or unwilling to		
129	represent the County in bringing this action, the County Council hereby requests that the			
130	County Prosecutor authorize the County Council to retain outside counsel to bring such			
131	action.			
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134	APPROVED this day of	, 2024.		
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137		WHATCOM COUNTY COUNCIL		
138	ATTEST:	WHATCOM COUNTY, WASHINGTON		
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142	Cathy Halka, Clerk of the Council	Barry Buchanan, Council Chair		
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145	APPROVED AS TO FORM:			
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149	Civil Deputy Prosecutor			